

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 13, 2009 Session

**STATE OF TENNESSEE v. EMMANUEL DERON JACKSON**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2007-B-1362     Mark J. Fishburn, Judge**

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**No. M2008-00636-CCA-R3-CD - Filed October 14, 2009**

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A Davidson County jury convicted the Defendant, Emmanuel Deron Jackson, of second degree murder, aggravated assault, and evading arrest and the trial court sentenced him to a twenty-year sentence in the Tennessee Department of Correction. On appeal the Defendant contends: (1) the trial court erred when it instructed the jury; and (2) the evidence is insufficient to sustain his conviction of second degree murder. After a thorough review of the record and the applicable law, we affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Richard Tennent, Nashville, Tennessee, for the Appellant, Emmanuel Deron Jackson.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Lacy Wilber, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Jeff Burks, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**I. Facts**

This case arises from the March 30, 2006, shooting and subsequent death of Lonnell Matthews (a/k/a "Bu Dog") on Old Hydes Ferry Road in Nashville, Tennessee. A Davidson County grand jury indicted the Defendant and Brandon Daniels for premeditated first degree murder, felony murder, and especially aggravated robbery. The Defendant, alone, was charged with evading arrest. A superseding indictment was issued charging the Defendant with a second count of especially aggravated robbery. The indictments against the Defendant and Brandon Daniels were severed prior to trial.

At trial, the following evidence was presented: Rusty Martin, a Davidson County Animal Control employee, testified that he was driving on Old Hydes Ferry Road on March 30, 2006, when

a young man stepped into the road and waved his hands for Martin to stop. The young man was later determined to be Lonnell Matthews, the victim in this case. The victim told Martin, "I need help, I've been shot." Martin pulled his truck over, got out, and helped the victim, who appeared to have been shot in the back, over to the side of the road. Martin called the police and asked the victim if he knew the shooter, but the victim shook his head. Near where he found the victim, Martin noticed a red Monte Carlo in a ditch at the intersection of Old Hydes Ferry Road and Ashland City Highway.

Russ Taylor, a Comcast Cable employee, testified he was driving down Old Hydes Ferry Road and noticed the victim in the road waving his arms to get someone to stop. By the time Taylor reached the victim, an animal control truck had already stopped. Taylor pulled his vehicle off the road and went over to the victim. Taylor saw a bullet hole in the victim's back, blood in the victim's crotch area, and he noted the victim was having difficulty breathing. Taylor asked the victim what happened, and the victim replied that he had been carjacked. Taylor then asked if the victim knew who carjacked him and the victim shook his head. Taylor estimated that the Old Hydes Ferry/Ashland City Highway intersection, which was where emergency responders parked, was approximately 150 feet from where he helped the victim. Taylor walked up the road to see what was detaining the emergency vehicles and saw a vehicle in a ditch. On cross-examination, Taylor agreed he had previously testified that the victim stated in words that he did not know who carjacked him.

Officer Joseph Helmtoller, a patrol officer with the Metropolitan Nashville Police Department, testified that, while en route to the scene of the shooting, Reta Biggs flagged him down and indicated the direction in which she had watched two men running down the roadway. Officer Helmtoller patrolled in the area Biggs observed the men fleeing, but finding no one, proceeded to the crime scene. Later that same day, a K-9 officer detained a black man in the area Biggs had seen the suspects flee, and Officer Helmtoller transported this man to the police precinct.

Reta Biggs testified she saw two black men, one of whom had a white cell phone, standing beside Bordeaux Muffler Shop, approximately sixty feet from her home. Biggs had never seen these two men before and continued to watch them for approximately an hour because she was suspicious of their activity. She saw the men squat down and then get back up, and take off running when a police helicopter flew overhead. Biggs watched as the first man ran with what looked to be a cell phone in his hand while the second man had difficulty keeping up because his pants kept sliding down. Biggs noted that the second man had corn rows in his hair and wore blue jean shorts and a dark blue top. She continued to watch them as they ran down Clarksville Highway towards White's Creek. Later that day, Biggs told a police officer the direction in which she had seen the men run.

Several days later, Biggs identified photographs of Brandon Daniels and the Defendant as the men she saw behind the Bordeaux Muffler shop. When identifying the Defendant, she said, "I'm not going to say for sure, but if I had to say for sure, it's that one." She also identified the Defendant at trial as the man she saw on March 30, 2006, by the muffler shop with corn rows in his hair and wearing blue jean shorts and a dark blue top.

Robin Wright testified he was standing outside of Complete Auto Repair, which is located in the same building as Bordeaux Muffer shop, when he noticed a helicopter flying overhead. He then saw two black men, one of whom had a cell phone, walk together from the side of the muffler shop and start running toward the fire department. As they ran, one took a lead over the other.

Mickey McLeod testified he was working at Flowers by Louis Hody on the day of this shooting. He remembered there was police activity that day in the area, including a helicopter flying overhead. He stepped outside to see what was going on, and when he looked around the corner to view the back of the building, he saw a black man (later identified as Brandon Daniels) running through the field toward him. McLeod described the man as wearing dark blue jeans, a dark shirt, and wet from the waist down. The man was also holding a cell phone to his ear as if speaking to someone. The man came from the direction of White's Creek, which ran behind the florist shop. The man walked around the building and got into the passenger side of a gold Mazda Toyota four-door sedan which drove off.

Billy Carney testified he was also working at Flowers by Louis Hody on the day of the shooting. Mr. Carney testified he was outside the building when he saw a black man (later identified as Brandon Daniels) with long hair, who was wet from the waist down, run by yelling into a cell phone, "Get here, get here now, pick me up." The man then got into a Kia or Mitsubishi, which was blue or gray in color, with a woman. Carney heard helicopters flying overhead within seconds of seeing the man.

Officer Robert Collins, a police officer with a K-9 unit, responded to Detective Harold Haney's request for a K-9 search of a wooded area behind Flowers by Louis Hody. As they began the search, Officer Collins noticed the Defendant come across the field near the rear of the florist shop. The Defendant did not see Officer Collins, so Officer Collins positioned himself in a "safe position" and watched the Defendant as he walked toward the road. When the Defendant approached, Officer Collins told him to stop, and the Defendant took off running. After Officer Collins repeatedly shouted for the Defendant to stop, he released the K-9 officer, who apprehended the Defendant. Officer Collins observed that the Defendant appeared dirty and sweaty and that he wore a dark colored shirt and shorts. While the Defendant was being taken into custody, he repeatedly told Officer Collins to "just go ahead and kill" him. Officer Collins identified the Defendant at trial as the person the dog apprehended on March 30, 2006.

Officer Collins returned to the area behind the Bordeaux Muffler shop to conduct an "article search." Approximately fifteen yards into the wooded area behind the muffler shop, the dog indicated on a nine millimeter pistol lying on the ground.

Harold Haney, a detective with the Davidson County Police Department, was assigned as one of the lead investigators on this homicide. Detective Haney contacted a K-9 unit and requested they search in the field behind the florist for any possible articles left behind by the suspects. When Detective Haney learned that a suspect, the Defendant, had been taken into custody, he approached the Defendant and asked his name, address and age. Detective Haney noted a little blood on the

Defendant's forehead. When Detective Haney requested medical assistance for the Defendant, the Defendant stated that the injury to his forehead was from someone hitting him in the head with a 357 Magnum. The Defendant also stated he was armed and had shot at someone, but did not know if he hit him. After this statement Detective Haney read the Defendant his Miranda rights, and the Defendant then gave Detective Haney a more detailed statement.

The Defendant told Detective Haney that a person he knew as "Bu Dog,"<sup>1</sup>(the victim, Lonnell Matthews) and another man, unknown to the Defendant, picked up the Defendant at his house so the Defendant could buy marijuana. The three men drove around for a while in the victim's red Monte Carlo. The Defendant sat in the front passenger seat, the victim drove, and the third man sat in the back seat. The Defendant told Detective Haney that the man in the back seat pulled out a 357 Magnum, hit the Defendant on the head, and told the Defendant to give him his money. In response, the Defendant pulled out a nine millimeter gun and started shooting. He told Detective Haney he was still in the car while he was shooting and explained that he had been running from the police all day because he thought he might have hit the victim. The Defendant stated that, after he fled the victim's vehicle, he threw his weapon into a wooded area.

Stephen Haines, a police officer with the Metropolitan Nashville Police Department, testified a helicopter air unit asked for assistance stopping a car believed to have come from the scene of this shooting. The unit directed Officer Haines to a vehicle parked at 1819 5<sup>th</sup> Avenue, North. A young woman, later identified as Megan J. White, got out of a gold Toyota Camry with a temporary tag when he arrived. Officer Haines described her as nervous and crying, and her first words to Officer Haines were, "He jumped into my car." Officer Haines inquired "Who?" and she replied "Jo-Jo," later determined to be Brandon Daniels. She told Officer Haines that "Jo-Jo" had jumped out of the car at a Shell station over on D.B. Todd Boulevard. Officer Haines told White to drive her car to be processed and then drove her to meet with Detective Danny Satterfield.

Megan White, a friend of Brandon Daniels ("Jo-Jo"), testified she was at home asleep when she received a call on March 30, 2006 from a phone number she did not recognize. When she answered, Daniels calmly asked White to pick him up at the Citgo on Clarksville Highway. Daniels called again to ask where White was as she pulled up to the Citgo. White testified that those were the only two phone calls between Daniels and her on that date. When Daniels got in White's gold Toyota Camry, he was soaking wet and his eyes were bloodshot. Daniels asked White to take him to his aunt's house. White asked Daniels, "What you done[ ]?," and Daniels responded "nothing" and again asked that White take him to his aunt's house. Daniels also said, "Man." When White asked what he meant, he said "Man-Man." White asked who that was and Daniels told her not to "worry about it." White recalled she had seen a black man wearing a black shirt, blue jeans, and black shoes with braids in his hair, come out of the field behind the florist shop as Daniels entered her car. White recognized the man because she had seen him before at her sister's house.

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<sup>1</sup> The trial transcript spells this name "Boo Dog," however, the Defendant in his confession spells this name for the Detectives as "Bu Dog." We will use the spelling provided by the Defendant.

When White reached 26<sup>th</sup> Avenue North, Daniels jumped out of the car, leaving the passenger side door open. At this point, White saw a helicopter overhead. When she arrived home, police officers approached her and informed her of the shooting. She drove her car to a location for police processing and then was taken to a police precinct to meet with a detective. White provided Detective Russell with descriptions of the Defendant and Daniels and, based on her descriptions, she was shown photographs of suspects. She identified photographs of both the Defendant and Daniels.

White testified that she has two children and that Daniels could potentially be the father of either child. They never dated, and White characterized her relationship with Daniels as “friends.” White testified that Daniels had pushed her down and kicked her twice and shot through her car windshield. On cross-examination, defense counsel questioned White about fifteen phone calls on the call record provided by Cricket between her cell phone and the cell phone listing Brandon Bass as the subscriber on the morning of March 30, 2006. White denied any knowledge of phone calls beyond the two where Daniels called to have her pick him up and called to see where she was.

Phillip Jackson, the Defendant’s cousin, testified that the Defendant called him on the day of this shooting and informed him that he was going to purchase drugs. Later that day, the Defendant called Jackson breathing hard and saying, “[T]hey tried to rob him or something,” and then the phone cut out. Jackson went to the Defendant’s home on Putnam Drive to try to figure out “what was going on.” In response to this testimony, the State attempted to impeach Jackson with prior testimony in which he did not state that the Defendant ever mentioned being robbed. Jackson maintained that the Defendant did say he was robbed and did not explain why the prior testimony differed from his trial testimony.

On cross-examination, Jackson testified that during interviews with both the Assistant District Attorney and Detective Haney, prior to trial, he reported the Defendant’s statement that he had been robbed. Jackson also confirmed that the hearing where Jackson previously testified was not a hearing related to the Defendant.

Billie Matthews, mother of the victim, stated that she paid the bill for two cell phones that her son, the victim, carried with him. The first phone was in her name but it was for the victim’s use. The other phone was originally owned by Brandon Bass, a friend of the victim’s. When Bass was incarcerated, the victim kept Bass’s phone so Bass could call the victim while he was incarcerated. She identified a Kyocera phone recovered from the red Monte Carlo as her son’s phone. Additionally, Matthews testified that she had seen the Defendant before in her driveway and that her son knew the Defendant.

Todd Reel, the Operations Manager for Cricket Communications in Nashville, testified he had call records, dated from March 23 to April 2, 2006, for two different phone numbers. Billie Matthews, the victim’s mother, was the subscriber and account owner for one of the phone numbers and the user for that phone was listed as Lonnell Matthews, the victim. The specific phone for this number was listed as a Kyocera Excurion and was disconnected on April 6, 2006 with the disconnect reason being

that the phone had been stolen. The call record for the other cell phone listed the subscriber as Brandon Bass.

The Cricket phone records revealed a number of calls to and from the phones possessed by the victim. The calls to the phone assigned to the victim as the user discontinued after the shooting. The phone history for Bass's phone had multiple calls made and received around and after the time of the shooting. The relevant parties<sup>2</sup> involved in these phone calls were Megan White and Phillip Jackson. On the day of the shooting, fifteen phone calls were made either from or to Megan White between 10:24 a.m. and 2:48 p.m. and one phone call was made to Phillip Jackson at 10:27 a.m.

William Kirby, a police officer in the identification section of the Metropolitan Nashville Police Department, and Alicia Primm, a crime scene investigator, testified that they were called to the Old Hydes Ferry Road, Ashland City Highway area on March 30, 2006. When Kirby arrived, the victim had already been transported. A red Monte Carlo, with the engine running, was partially in a ditch and a few articles of clothing were lying around. A black ball cap was recovered ten to fifteen feet from the Monte Carlo, and a white shirt was found near the point from which the victim was transported to the hospital. The Monte Carlo was partially processed on the scene for fingerprints that might be disturbed during towing. Kirby and Primm also photographed the Monte Carlo and took crime scene measurements of the car. The Monte Carlo was towed for further processing, where the following items were recovered from the car: a shell casing, a set of electronic scales, the victim's Kyocera cell phone, a few Polaroid photographs, a black knit jacket, a set of keys, and a Grey Goose vodka bottle. Police also found one bag of what appeared to be marijuana and one bag of what appeared to be cocaine between the front seats. Fingerprints were lifted from the passenger exterior door, the driver exterior door, one of the Polaroid photographs, and the Kyocera phone. No blood or bullet strikes were found in the vehicle. Another officer gave Primm the victim's wallet, which contained the victim's driver's license. A photocopy was made of the driver's license issued to Lonnell Matthews, the victim. The K-9 unit recovered a loaded nine millimeter weapon from the scene, but no fingerprints were recovered from the weapon.

Sharon Trent, a latent fingerprint examiner with the police department, examined the prints lifted from the red Monte Carlo. Trent identified the print from the passenger side door as the Defendant's fingerprint. She identified the print from the inside window of the passenger side door as the fingerprint of Brandon Daniels. A print from the driver's exterior door was identified as the victim's fingerprint. The remaining fingerprints either contained insufficient ridge characteristics to form a profile or did not match any print in the database.

Michael Baker, a police officer in the Forensics Firearms Unit of the Metropolitan Nashville Police Department, analyzed the following materials recovered in this case: a nine millimeter High Point pistol, a discharged Winchester caliber nine millimeter cartridge casing, three undischarged Winchester cartridges, an undischarged Remington Peters cartridge, an undischarged BMC cartridge, and an undischarged TZZ cartridge case or cartridge. Officer Baker conducted a test fire with the nine

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<sup>2</sup> Other incoming calls were received, but no evidence was presented at trial as to the other calls.

millimeter High Point pistol to determine if the discharged cartridge was shot from this particular gun. Officer Baker was able to determine that the firearm was functional, capable of discharging the ammunition and the weight of the trigger pull was 6.8 pounds. He was also able to confirm that the discharged cartridge was, in fact, discharged from the the High Point pistol.

Dr. Amy McMaster, the deputy chief medical examiner for Davidson County, testified about the victim's autopsy results.<sup>3</sup> The victim had two gunshot wounds, one on his back, and one on his right thigh, and blunt trauma injuries to the left side of his forehead. The bullet that struck his back entered through the victim's back right side and exited through his abdomen above his belly button, causing extensive internal bleeding. The bullet that struck his thigh entered to the right side of the thigh and exited out the back creating a wound that would not necessarily have been fatal. Based on these injuries, McMaster testified that the victim died fairly quickly, an estimated five minutes or less. A toxicology test indicated the victim had recently used marijuana. McMaster's conclusion regarding the cause and manner of death of the victim based on the autopsy was that the cause of death was multiple gunshot wounds and the manner of death was homicide.

Russell Thompson, a detective with the Metropolitan Nashville Police Department, was one of the lead investigators on this case. When Detective Thompson learned a K-9 officer had apprehended someone at West Hamilton and Haynes Park, he went to that location and found the Defendant in the back seat of a police car, wearing a black t-shirt and blue jean shorts. The Defendant was wet, sweating profusely, breathing hard, and had a scratch on his head. The Defendant was taken to the north precinct where Detective Thompson and Sergeant Batey interviewed the Defendant. The Defendant was read his Miranda rights at the scene and also in the interview room.

During the recorded interview, played for the jury, the Defendant's statements to Detective Thompson were consistent with what he earlier told Detective Haney regarding the shooting. In addition, he stated that the victim was the one demanding money while the man in the back seat had the weapon. The Defendant did not see a weapon on the victim and the victim never pulled a weapon. The Defendant denied owing any money to the victim and was unclear on how much money was actually taken from him. The Defendant admitted that he fired first and fired three shots at the driver of the vehicle, the victim. He further stated, "I just hopped out right there at the stop sign when he was fixin' to take off. And it surprised me and I dropped out. Boom, boom, boom! Tryin' to dump - tryin' to kill - I was tryin' to kill'em, I ain't gonna lie." When asked why he was trying to kill the victim, he stated "I wasn't tryin' to kill Bu Dog, you know what I'm sayin', the dude in the back. I was just shootin', you feel me? Cause they had the pistol on me. If they had the pistol on you, you have a pistol in your pocket, what you gonna do?" The Defendant stated that he did not know when the man in the back seat stopped chasing him, but he ran until he reached the Institute of Learning Research building and hid there the entire time.

Prior to jury deliberation, the Defendant filed a written request for a jury instruction on second degree murder. The instruction requested read as follows:

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<sup>3</sup>McMaster did not actually perform the autopsy but reviewed the reports and photographs from the autopsy.

Should the jury determine that all elements of Second Degree Murder have been proven by the prosecution beyond a reasonable doubt, then the jury must determine whether the killing resulted from a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner. If the jury finds this additional element of adequate provocation, then the jury must find the defendant not guilty of Second Degree Murder, and guilty instead of the lesser included offense of Manslaughter.

The trial court did not use the instructions requested by the Defendant but instructed the jury based upon the Tennessee Pattern Jury Instructions.

After hearing the evidence presented at trial, the jury convicted the Defendant of the lesser offenses of second degree murder and aggravated assault, and of evading arrest. The Defendant now appeals from the judgment of conviction for second degree murder.

## **II. Analysis**

On appeal, the Defendant contends: (1) the trial court erred in failing to properly charge the jury as to the elements of second degree murder, and (2) the evidence is insufficient to sustain his conviction for second degree murder. The State argues that the trial court properly charged the jury as to the statutory elements of the crime and the evidence is sufficient to sustain a second degree murder conviction.

### **A. Jury Instructions**

The Defendant contends that the trial court erred in failing to inform the jury of all of the essential elements of the offense of second degree murder. Specifically, the Defendant asserts that an essential element of second degree murder is the lack of adequate provocation and that the trial court failed to properly charge the jury with the State's burden to prove this element beyond a reasonable doubt.

In criminal cases, a defendant has a right to a correct and complete charge of the law. *State v. Garrison*, 40 S.W.3d 426, 432 (Tenn. 2000). The failure to do so deprives the defendant of the constitutional right to a jury trial and subjects the erroneous jury instruction to harmless error analysis. *Id.* at 433-34. In evaluating claims of error in the jury charge, this court must review the charge in its entirety and read it as a whole. *State v. Leach*, 148 S.W.3d 42, 58 (Tenn. 2004). A jury instruction is considered "prejudicially erroneous if it fails to fairly submit the legal issues or if it misleads the jury as to the applicable law." *State v. Hodges*, 944 S.W.2d 346, 352 (Tenn. 1997).

Second degree murder is the knowing killing of another. T.C.A. § 39-13-210 (2006). The jury instructions as to second degree murder used in this case were consistent with the Tennessee Pattern Jury Instructions and contained the following:



For you to find [the defendant] guilty of this offense, the State must have proven beyond a reasonable doubt the existence of the following essential elements:

(1) that he or a person for whom he is criminally responsible unlawfully killed [the victim];

And

(2) that he acted knowingly.

“Knowingly” as used in the second essential element of Second Degree Murder means that the defendant acts with an awareness that his conduct is reasonably certain to cause the death of [the victim].

The requirement of “knowingly” is also established if it is shown that [the defendant] acted intentionally.

“Intentionally” means that a person acts with a conscious objective or desire to cause the death of [the victim].

The distinction between Second Degree Murder and Voluntary Manslaughter is that Voluntary Manslaughter requires that the killing result from a state of passion produced by adequate provocation sufficient to lead a reasonable person to act in an irrational manner.

Upon our review of the jury instructions issued by the trial court, we find that the trial court’s instruction included the material elements of second degree murder as provided in the statute, thus the jury instructions were proper.

The Defendant asserts that this Court has altered the statutory definition of second degree murder by adding an element requiring that the State prove the Defendant acted without adequate provocation in order for a jury to properly find the Defendant guilty of second degree murder. The Defendant relies on several unreported cases to support this assertion. Our review of the cases indicate that this Court acknowledged the difference between second degree murder and voluntary manslaughter. Voluntary manslaughter requires adequate provocation while second degree murder does not. In our view, this observation by the Court did not create an additional element of second degree murder. “The power to define what shall constitute a criminal offense and to assess punishment for a particular crime is vested in the legislature.” *State v. Burdin*, 924 S.W.2d 82, 87 (Tenn. 1996); *State v. Hale*, 840 S.W.2d 307, 314 (Tenn. 1992); *Hunter v. State*, 496 S.W.2d 900, 902-03 (Tenn. 1972); *Jones v. Haynes*, 424 S.W.2d 197, 198 (Tenn.1968); *Woods v. State*, 169 S.W. 558, 559-60 (Tenn. 1914). The legislature, not this Court, has the authority to define a criminal offense, and, we do not believe that this Court intended to redefine second degree murder in the unpublished opinions

relied upon by the Defendant. Thus, the Defendant is not entitled to relief on this issue.

### **B. Sufficiency of the Evidence**

On appeal, the Defendant contends that the evidence is insufficient to sustain his conviction for second degree murder. Particularly, he contends that no rational juror could have found proof beyond a reasonable doubt that this killing occurred without adequate provocation. The State counters that the State produced sufficient evidence that the Defendant unlawfully and knowingly shot and killed the victim.

When an accused challenges the sufficiency of the evidence, this Court's standard of review is whether, after considering the evidence in the light most favorable to the State, "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); see Tenn. R. App. P. 13(e), *State v. Goodwin*, 143 S.W.3d 771, 775 (Tenn. 2004) (citing *State v. Reid*, 91 S.W.3d 247, 276 (Tenn. 2002)). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of both direct and circumstantial evidence. *State v. Pendergrass*, 13 S.W.3d 389, 392-93 (Tenn. Crim. App. 1999). A conviction may be based entirely on circumstantial evidence where the facts are "so clearly interwoven and connected that the finger of guilt is pointed unerringly at the Defendant and the Defendant alone." *State v. Smith*, 868 S.W.2d 561, 569 (Tenn. 1993). The jury decides the weight to be given to circumstantial evidence, and "[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury." *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (citations omitted). In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs*, 995 S.W.2d 102, 105 (Tenn. 1999); *Liakas v. State*, 286 S.W.2d 856, 859 (Tenn. 1956). "Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997); *Liakas*, 286 S.W.2d at 859. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978); *State v. Grace*, 493 S.W.2d 474, 479 (Tenn. 1973). The Tennessee Supreme Court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

*Bolin v. State*, 405 S.W.2d 768, 771 (Tenn. 1996) (citing *Carroll v. State*, 370 S.W.2d 523 (Tenn. 1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence

contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin*, 143 S.W.3d at 775 (citing *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers*, 35 S.W.3d 516, 557-58 (Tenn. 2000).

A conviction for second degree murder requires proof beyond a reasonable doubt that the defendant unlawfully and knowingly killed the victim. *See* T.C.A. §§ 39-13-201, -210(a)(1) (2006). A person acts knowingly with respect to a result of the person's conduct when the person is aware that the conduct is reasonably certain to cause the result. T.C.A. § 39-11-302(b) (2006).

The evidence, considered in the light most favorable to the State, proves that the Defendant, armed with a nine millimeter gun, engaged in the sale of illegal drugs with the victim and an unknown man. He was in the victim's car when a demand for money was made by the victim and the unknown man in the backseat displayed a gun and hit the Defendant with it. The Defendant then opened fire on the vehicle, shooting at the victim, who had not displayed a weapon. The Defendant then fled the scene, disposed of the weapon and hid from police because, although unsure, he thought he might have shot the victim. The Defendant was seen in the area of the shooting by multiple witnesses and ultimately apprehended in the area where witnesses had observed his flight. The nine millimeter gun used in the shooting was recovered in the area where the Defendant indicated he threw his weapon and the Defendant's fingerprints were found inside the victim's vehicle. The Defendant's statements to police detectives following his apprehension acknowledged that he intended to shoot into the car and that he shot at the driver. He stated his conduct was in response to an attack by the unknown man in the backseat of the red Monte Carlo. As a result of his conduct, the victim died of gunshot wounds.

The evidence at trial showed that the Defendant fired three shots at the victim, shooting the victim in the back and thigh, ultimately causing his death. Although there was evidence that the Defendant was provoked by an unknown third passenger attempting to rob the Defendant, the jury rejected this theory, which is within its province. Thus, the evidence is sufficient to sustain the Defendant's conviction of second degree murder.

### **III. Conclusion**

After a thorough review of the record and the applicable law, we conclude that the record contains sufficient evidence to support the Defendant's convictions for second degree murder. Further, we conclude that the trial court correctly instructed the jury. As such, we affirm the trial court's judgments.

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ROBERT W. WEDEMEYER, JUDGE